In the High Court of Punjab and Haryana at Chandigarh

.....

(1) Cr.W.P. No.213 of 2007

•••••

Date of decision:13.8.2007

Gurmit Singh and another

.....Petitioners

v.

State of Punjab and others

.....Respondents

....

(2) Cr.W.P. No.237 of 2007

•••••

Rajinder

.....Petitioner

v.

State of Punjab and another

.....Respondents

....

(3) Cr.W.P. No.238 of 2007

•••••

Paramjit Singh

.....Petitioner

v.

State of Punjab and another

.....Respondents

....

(4) Cr.W.P. No.239 of 2007

•••••

Gopal

.....Petitioner

v.

State of Punjab and another

.....Respondents

....

(5) Cr.W.P. No.264 of 2007

.....

Kaur Singh

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Present: Mr. Kuldeep V. Singh, Mr. S.S. Rana and Mr. C.L. Goyal, Advocates for the petitioners.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

.....

S.S. Saron, J.

This order will dispose of the Criminal Writ Petitions No.213, 237, 238, 239 and 264 of 2007 as they involve similar question of law.

The petitioners in the respective petitions have been convicted for the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 (`Act' – for short). They pray for issuance of directions for their release in view of the fact that they have completed their sentences of imprisonment. It is submitted that the benefit of remissions, which are awarded by the State Government in exercise of its power under Article 161 of the Constitution of India is not being extended to them. The said action is stated to be illegal and arbitrary. The petitioners pray that they are entitled to the benefit of remissions, which are granted by the State Government from time to time to all the convicts confined in various jails. The petitioners have placed on record the remissions that have been granted

by the State Government from time to time. If the period of remissions is taken into account the necessary sentence of imprisonment is stated to have been completed by the petitioners.

The respondents have opposed the claim of the petitioners by taking the stand that in view of the embargo created by Section 32-A of the Act, the petitioners in the respective petitions, who are convicts under the NDPS Act, are not entitled to the benefit of remission. It is, however, not disputed by learned counsel appearing for the parties that a learned Single Judge of this Court in the case of Ekka Ram v. State of Punjab etc. (Cr.W.P. No.839 of 2004) has held that the powers of the Governor of the State under Article 161 of the Constitution of India cannot be whittled down by a statutory provision like Section 32-A of the NDPS Act. In the said case the convict under the NDPS Act was held entitled to the benefit of remission granted by various notifications/circulars issued by the State Government from time to time in exercise of its powers under Article 161 of the Constitution of India. The orders passed in Ekka Ram's case (supra) has been assailed by the State by way of SLP (Crl.) No.2496 of 2006 in the Supreme Court of India. In similar circumstances, a Single Judge of this Court in the case of Surjan Singh v. State of Punjab and others (Cr.W.P. No.1179 of 2006, decided on 22.2.2007) observed as follows:-

> "[9]. Normally, when the legality of the order passed by this Court is *sub judice* before the Hon'ble Supreme Court, it would have been appropriate to adjourn these cases to await the final outcome of the pending Special Leave Petition.
>
> [10]. However, learned counsel for the parties have pointed out, and rightly so, that there is an urgency in these cases

inasmuch as the petitioners have already undergone substantial part of the actual sentence and if the matters are not taken up at the earliest, most of them will complete the entire period of sentence, thereby rendering these cases infructuous. That apart, if the view taken by the learned Single Judge of this Court is approved by the Apex Court, the petitioners would be deemed to have been retained in illegal custody in excess to the period of their lawful sentence.

[11]. The workable solution for the interregnum has been effectively devised by another learned Single Judge of this Court vide order dated November 8, 2006 passed in Crl.W.P. No.768 of 2005 (Ajaib Singh s/o Jit Singh v. State of Punjab & Ors.) wherein the petitioner, who was a similarly situated convict under the NDPS Act, was ordered to be temporarily released subject to his fulfilling the following terms and conditions:-

> "(1) Before releasing the petitioner, the concerned Superintendent of Jail will verify the period undergone by the convict and the remissions granted under Article 161 of the Constitution of India and that if after subtracting the period on parole, the convict has undergone the sentence awarded by the court, he shall be released temporarily on bail to the satisfaction of the Chief Judicial Magistrate during the pendency of the Special Leave Petition filed by the State of Punjab in the case of Ekka Ram (SLP (Crl.) No.2496 of 2006) arising from the final judgment and order dated 14.9.2005 passed in Crl.W.P. No.839 of 2004. The convict concerned will be granted the benefit of remission as per the circulars issued by the Government of Punjab under Article 161, after his conviction.
>
> (2) The petitioner will remain on bail during the pendency of SLP No.2496 of 2006 in Hon'ble Supreme Court. If as per the judgment of the Supreme Court, benefit of remissions under Article 161 is not granted, the convict will surrender

back in jail for undergoing the unexpired period of sentence.

(3) At the time of release on bail, the petitioner will give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and will continue informing the Chief Judicial Magistrate concerned his residential address from time to time."

[12]. Following the order dated November 8, 2006 passed by this Court, the operative part of which has been reproduced above, these petitions are also disposed of with a direction that the cases of the petitioners for their temporary release be considered and if they fulfill all the terms and conditions laid down by this Court in the order dated November 8, 2006, they be also temporarily released on bail on the same terms and conditions. The entire exercise shall be done by the concerned Superintendents of Jails as early as possible but not later than one month from today.

Disposed of."

In the light of the above observations/directions in Surjan Singh's case (supra), the present petitions are also disposed of.

August 13, 2007. **(S.S. Saron)**
Judge

hsp